IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

ST.Rev..No. 199 of 2003

ORDER DATED 2.5.2003 IN TA.210/2003 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL .BENCH-I,ERNAKULAM

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REVISION PETITIONER/PETITONER IN TA/ASSESSEE:

M/S. GENERAL ENGINEERING INDUSTRIES,
JOS TRUST BUILDINGS,
CHITTOOR ROAD,
ERNAKULAM, KOCHI-682 035.

BY ADV. SRI.JOSEPH JERARD SAMSOM RODRIGUES

RESPONDENT/RESPONDENT IN TA/REVENUE:

STATE OF KERALA.

BY SPECIAL GOVERNMENT PLEADER MR.VINOD CHANDRAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

S.T.Rev.No.199 of 2003

Dated, this the 24th day of October, 2007

ORDER

H.L.Dattu, C.J.

Petitioner is a dealer, registered both under the provisions of the Kerala General Sales Tax Act, 1963 ('KGST Act' for short) and the Central Sales Tax Act, 1956 ('CST Act' for short).

(2) Petitioner is born on the files of the Additional Sales Tax Officer, 3rd Circle, Ernakulam.

(3) The assessment period in question is from 1.4.1993 to 31.3.1994.

(4) The assessee effects intra and inter State purchases of MS Angles and Channels. After making some process to the purchased commodity, supplies the same to the Kerala State Electricity Board ('the Board' for short).

(5) For the assessment year in question, the assessee had filed its annual return before the assessing authority and in that had conceded the total and taxable turnover.

(6) The assessing authority being of the opinion that the return so filed by the assessee cannot be accepted by him, after issuing a pre-assessment notice, had concluded the best judgment assessment. Aggrieved by the said order, the assessee had carried the matter upto the Tribunal. The Tribunal by its order dated 29.5.2001 in T.A.No.739A of 1999 had remanded the matter to the assessing authority to redo the matter in accordance with law within a particular time frame.

(7) After such remand, the assessing authority had issued a pre-assessment notice. In that he had pointed out several irregularities in the

return of income filed by the assessee. He had also categorically stated that the assessee has not maintained the stock registers both for the purchase and the sales effected by them. Though the said notice was served, the assessee, for the reasons best known to them, has not filed any objections whatsoever in spite of granting sufficient time by the assessing authority. Therefore, the assessing authority being left with no other alternative had proceeded to complete the best judgment assessment after rejecting the return filed by the assessee. In the assessment order so made, the assessing authority has made certain additions to the purchases and the sales effected by the assessee and has quantified the tax liability after making such additions.

(8) Aggrieved by the said order passed by the assessing authority, the assessee had carried the matter in appeal before the first appellate authority. In the appeal that was filed, the primary contention canvassed by the assessee is with regard to the additions made by the assessing authority. Accepting the contentions so canvassed, the first appellate authority while passing the order dated 28.10.2002, has modified the additions made by the assessing authority and in all other respect has sustained the order passed by the assessing authority.

(9) The assessee not being satisfied with the order so passed by the first appellate authority, had carried the matter in second appeal before the Sales Tax Appellate Tribunal in T.A.No.210 of 2003. Apart from contending that the additions made by the assessing authority and modified by the first appellate authority is excessive, the assessee had also contended that the assessee purchases MS Angles and Channels and makes holes by drilling and

supplies VX Arms to the Board and therefore there is no manufacturing activity and the assessing authority was not justified in treating the sales effected by the assessee to the Board as electrical goods and the rate of tax applicable is at the rate of 10%. The Tribunal, though noticed this contention, has not answered it. The Tribunal proceeded on the basis that since the assessee had not maintained the manufacturing account, the additions made by the assessing authority is justified. But the Tribunal being of the opinion that the additions made by the first appellate authority is also excessive, once again reduced it to 10%. Aggrieved by this order passed by the Tribunal, the assessee is before us in this revision petition.

(10) The assessee has raised the following questions of law for our consideration and decision. They are as under:

> "1. In the facts and circumstances of the case whether the Hon'ble Tribunal is justified in retaining an addition of 10% of the total turnover conceded by the petitioner with a further addition of 55% of added turnover under Section 5A of the KGST Act, 1963 for the reason that there was a failure on the part of the petitioner to maintain a manufacturing account under Rule 32(15) of the KGST Rules, 1963 when there was no manufacturing activity?
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> 2. Whether the Hon'ble Tribunal is justified in its conclusion that the petitioner is bound to maintain a manufacturing account under Rule 32(15) of the KGST Rules, 1963?
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> 3. Whether the Hon'ble Tribunal is justified in retaining the addition of 10% of the total turnover conceded with a further addition of 55% of the added turnover under Section 5A of the Act in view of the principle laid down by the Hon'ble High Court of Kerala in C.O.Varghese Vs State of Kerala, T.R.C.No.65 of 2003, 2003 (2) KLT 81(SN) and also the decision of the Hon'ble High Court of Kerala in George Thomas Vs State of Kerala reported in (1999) 113 STC 388?
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> 4. Whether the Hon'ble Tribunal is justified in law in upholding the view of the lower authorities that cross-arms,

stay rods, clamps etc. are electrical goods?

5. Whether the Hon'ble Tribunal is justified in upholding rates higher than 4% for sales made to Kerala State Electricity Board not supported by declarations in view of the fact that the rate of tax of the items dealt with by the petitioner was only 4%?"

(11) At the time of hearing of this revision petition, the learned counsel appearing for the assessee would contend that the assessee purchases MS Angles and Channels and makes holes by drilling and supplies VX Arms to the Board. Making holes in MS Angles and Channels would not result in a manufacturing activity and therefore, the assessing authority was not justified in construing that what is supplied to the Board is electrical goods and the rate of tax applicable is at the rate of 10%. Apart from this, the learned counsel would submit that the State Government has issued a notification dated 11th August, 2003 in S.R.O.No.774 of 2003 reducing the rate of tax for the supply made to the Kerala State Electricity Board for the period from 1st of January, 1994 to 31st March, 1995, to 4% and therefore, the assessing authority was not justified in levying tax at the rate of 10%.

(12) Per contra, Sri.Vinod Chandran, learned Special Government Pleader, sought to justify the impugned orders passed by the assessing authority and confirmed by the Tribunal.

(13) It is not in dispute, nor it can be disputed that the assessee purchases both intra and inter State MS Angles and Channels. After cutting and drilling those MS Angles, supplies VX Arms to the Board. The assessing authority proceeded on the basis that what is supplied by the assessee to the Board is electrical goods and if that is so, the rate of tax applicable is at the rate of 10%. The assessee, no doubt, before the assessing authority as also

before the first appellate authority had not raised the contention that its activity is not a manufacturing activity and therefore, the assessing authority was not justified in levying tax at the rate of 10%. But, before the Tribunal, the assessee had specifically contented that there is no manufacturing activity as such, and therefore the assessing authority could not have levied tax at the rate of 10% treating VX Arms as electrical goods. Since the authorities under the Act require to examine this assertion of the petitioner whether there is any manufacturing activity or not, we do not intend to answer the aforesaid issue canvassed by the petitioner before us. In our opinion, the matter once again requires to be remanded back to the assessing authority to re-examine the claim of the petitioner and pass appropriate orders in accordance with law.

(14) In so far as the notification on which reliance is placed by the learned counsel for the petitioner, the said notification was not available when the authorities under the Act and the Tribunal passed the impugned orders. But the State Government in exercise of its powers under Section 10 of the Act has issued a notification S.R.O.774 of 2003 giving retrospective effect to the said notification. Though the notification is dated 11th August, 2003, the State Government intends to reduce the tax payable by the dealer to the sales effected by a dealer to the Kerala State Electricity Board for the period from 1st of January, 1994 to 31st March, 1995, to 4%. In our opinion, the said notification also requires to be looked into by the assessing authority while re-examining the matter afresh.

(15) In the result, without answering the questions of law framed by the assessee, the orders passed by the assessing authority dated 1.2.2002 for the assessment year 1993-94 and also all other orders passed pursuant thereto are

set aside and remanded the matter back to the assessing authority to redo the matter in accordance with law after issuing a proper notice to the petitioner. While doing so, the assessing authority will examine the claim of the assessee whether the activity of the assessee is a manufacturing activity or not and secondly whether the notification issued by the State Government in S.R.O.No.774 of 2003 dated 11th August, 2003 is applicable to the petitioner's case or not.

(16) With these observations and directions this revision petition is disposed of.

(17) Consequently, all pending interlocutory applications also stand rejected.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

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